IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11550 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITHALBHAI NAROTTAMBHAI PATEL - Petitioner(s)

Versus

PRINCIPAL - Respondent(s)

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Appearance :

MR AY KOGJE for Petitioner No(s).: 1.

NANAVATI & NANAVATI for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 05/08/2005

ORAL JUDGMENT

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1. The petitioner by way of these petitions has prayed to quash and set aside the order dated 22nd February, 2000 passed by the Appellate Authority at annexure-B to the petition and also the order dated 12th September, 2000 at annexure-C to the petition.

2. The short facts of the case are that the petitioner was working as a teacher with the respondent school. It is contended that the petitioner was entitled to gratuity under the provisions of Payment of Gratuity Act, 1972. Since the gratuity was not paid, the petitioner preferred an application being Application No. 116/98 before the Controlling Authority, which was allowed by the Controlling Authority vide order dated 23rd July, 1999.

2.1. Feeling aggrieved by the said order, the respondent preferred an Appeal being Appeal No. 24 of 1999 whereby the Appellate Authority vide order dated 22nd February, 2000 cancelled the order passed by the Controlling Authority, holding that the provisions of Payment Gratuity Act are not applicable in the present case.

2.2. Pursuant to the said order, the petitioner preferred Review Application being Review Application No. 19/2000, which came to be rejected vide order dated 12th September, 2000. Hence, this petition.

3.1. I have heard the learned counsel for the parties and have perused the materials produced on record. The issue involved in this petition is squarely covered by the Full Bench Decision of this Court in the case of **Shantiben L. Christian v. Administrative School, Ahmedabad Municipal School Board reported in 2001 (2) G.L.R. p. 1626**. The relevant observations are as under:-

> "Reading the definition of the term "employee" as found in Section 2(e) of the Payment of Gratuity Act, Section 2(s) of the Industrial Disputes Act and Section 2(i) of the Payment of Wages Act, it is very clear that in all the aforesaid Sections, the definition of the word "employee" is extended only to a limited class, and if a person not engaged to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work, it cannot be said that the person is covered by the definition of the employee as required to be understood under the Act. The language of the Minimum Wages Act is in para materia to the provisions contained in the Payment of Gratuity Act insofar as it relates to definition of "employee", and, as the Apex Court held that teachers are not employed to do any skilled or unskilled manual work, and therefore, the same will equally apply with the same force under the provisions of Payment of Gratuity Act. It is not the case in the petition that the petitioner was discharging duties than that of a teaching. The work of a teacher cannot be said to be supervisory, technical or clerical."

3.2. However, the aforesaid decision has been confirmed by the Apex Court in the case of **Ahmedabad Pvt. Primary Teachers' Assn. v. Administrative Officer & Ors., reported in (2004) 1 S.C.C. 755**. The relevant para reads as under :-

> “4. As all the learned Judges have unanimously held that teachers are not covered by the definition of the “employee” under Section 2(e) of the Act, it has become necessary for this Court to consider the correctness of the view with regard to the applicability of the Act to the teachers as a class.
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> 6. The Act is a piece of social welfare legislation and deals with the payment of gratuity which is a kind of retiral benefit like pension, provident fund etc. As has been explained in the concurring opinion of one of the learned Judge of the High Court “gratuity” in its etymological sense is a gift, especially for services rendered, or return for favours received”. It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity, old age etc. For the wage-earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions contained in the Act are in the nature of social security measures like employment insurance, provident fund and pension. The Act accepts, in principle, compulsory payment of gratuity as a social security measure

> to wage earning population in industries, factories and establishments.”

4. In above view of the matter, the petition deserves to be dismissed. Accordingly, the petition is dismissed. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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